

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ELLIOTT BUSHHEAD,

Plaintiff(s),

v.

MICHAEL J. ASTRUE,

Defendant(s).

2:12-CV-921 JCM (VCF)

ORDER

Presently before the court is plaintiff's motion to remand to the Social Security Administration. (Doc. # 12).

Also before the court is the report and recommendation of Magistrate Judge Ferenbach (Doc. # 20).

Plaintiff filed a motion to remand to the Social Security Administration ("SSA"). Thereafter, the parties filed a stipulation and proposed order for remand pursuant to 42 U.S.C. § 405(g), sentence four. (Doc. # 15). The parties stipulate that on remand, the administrative law judge ("ALJ") will "be directed to issue a partially favorable decision based on a light residual function capacity, with an established onset date of May 7, 2010" (Id.). Pursuant to sentence four of 42 U.S.C. § 405(g), "[t]he court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a hearing."

1 The magistrate judge held a hearing on the stipulation. (*See* doc. # 19). After holding a
2 hearing on the stipulation, the magistrate judge recommends that this court “enter a final judgment
3 reversing the Commissioner’s decision and remanding, without a hearing, with instructions to the
4 ALJ to issue a partially favorable decision based on a light residual function capacity, with an
5 established onset date of May 7, 2010.” (Doc. # 20, report and recommendation).

6 This court “may accept, reject, or modify, in whole or in part, the findings or
7 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects
8 to a magistrate judge’s report and recommendation, then the court is required to “make a de novo
9 determination of those portions of the [report and recommendation] to which objection is made.”
10 28 U.S.C. § 636(b)(1).

11 Where a party fails to object, however, the court is not required to conduct “any review at all
12 . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
13 Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate
14 judge’s report and recommendation where no objections have been filed. *See United States v.*
15 *Reyna–Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the
16 district court when reviewing a report and recommendation to which no objections were made); *see*
17 *also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s
18 decision in *Reyna–Tapia* as adopting the view that district courts are not required to review “any
19 issue that is not the subject of an objection.”). Thus, if there is no objection to a magistrate judge’s
20 recommendation, then this court may accept the recommendation without review. *See, e.g.,*
21 *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation
22 to which no objection was filed).

23 Nevertheless, this court finds it appropriate to engage in a de novo review to determine
24 whether to adopt the recommendation of the magistrate judge. Upon reviewing the recommendation
25 and underlying briefs, this court finds good cause appears to adopt the magistrate’s findings in full.

26 . . .

27 . . .


1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to
3 remand to the Social Security Administration (doc. # 12) be, and the same hereby, is DENIED as
4 moot.

5 IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge
6 Ferenbach (doc. # 20) be, and the same hereby, is ADOPTED in its entirety.

7 IT IS FURTHER ORDERED that the case be remanded back to the agency consistent with
8 the terms in the report and recommendation and stipulation.

9 DATED April 25, 2013.

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12 **UNITED STATES DISTRICT JUDGE**